Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 10. DECEMBER, 1903. NO. 7.

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO., Rochester, N. Y.

NEW YORK, 79 Nassau St. CHICAGO, 225 Dearborn St.

Entered at post office at Rochester, N. Y., as second-class mail matter.

Liability of Trust Companies Acting as Transfer Agents and Registrars.

The reason for the assumption, by trust companies, of the functions of the registrar and transfer agent is not found in any inability on the part of the majority of corporations to attend, themselves, to the transfer of their shares, but can be traced directly to a definite public demand for some species of guarantee of responsibility. The rush of business concerns to incorporate, and of the public to absorb new issues, which seems now to have passed its zenith, afforded ample opportunity for the flotation of worthless and fraudulent securities, from which impositions the public, rightly enough, wanted protection. In fact, the New York Stock Exchange has, since the exposure of the famous Schuyler frauds in 1869, enforced regulations to the effect that it will not list the stock of any company which does not have its certificates registered with some responsible trust company, or other suitable agency. The basic idea in this is evident, namely, to provide an additional safeguard which is outside of and beyond any which the corporation in and of itself may furnish.

In complying with the obvious spirit of the rule, corporations have shown a decided tendency to select, as their transfer agents and registrars, trust companies of recognized financial standing, and the public has, naturally, squared its ideas of the corporate responsibility by the prominence and strength of the agent.

To carry this logically another step would, apparently, impress upon the trust companies some responsibility for the corporations for which they act, and it is at this point that there arises the mooted question as to what liability they assume, on the one hand, to the interested public, and, on the other, to their corporation clients, when they place their names upon the stock certificates, either as transfer agents, or registrars.

The trust companies lean to the opinion that the liability assumed is merely that of an agent to its principal, in which the exercise of ordinary skill, knowledge, and good faith is required. On the other hand, the office not being a creation of the corporation by reason of any inability on its part to perform the duties involved, but being, rather, a system which custom and stock-exchange rules have forced upon it, there is reasonable ground for query as to whether the agent, intervening, as it does, between the corporation and the public, does not stand for the corporation in its relation to the public, and itself assume the liabilities for a careful and responsible handling of the stockholders' interests, for overissues, and fraudulent issues, of stock, and for the many other forms of fraud, the liability for which would fall on the corporation did it perform these functions for itself.

In this connection, we have the interesting Schuyler Frauds Case (New York & N. H. R. Co. *v.* Schuyler, 34 N. Y. 30), which

held that a bona fide holder of an overissue of certificates which were issued by the fraudulent and criminal act of the transfer agent could hold the corporation liable, since the fraud was perpetrated by the agent within the scope of his employment, and it made no difference that the principal did not actually know about, or authorize, such action.

This decision has been followed in a series of cases of sufficient merit to support the statement that it is now a well-settled principle (Fifth Avenue Bank *v.* Forty-second Street & G. Street Ferry R. Co. 137 N. Y. 231, 19 L. R. A. 331, 33 N. E. 378; Manhattan L. Ins. Co. *v.* Forty-second Street & G. Street Ferry R. Co. 139 N. Y. 146, 34 N. E. 776; Knox *v.* Eden Musee Americain Co. 148 N. Y. 441, 31 L. R. A. 779, 42 N. E. 988; Jarvis *v.* Manhattan Beach Co. 148 N. Y. 652, 31 L. R. A. 776, 43 N. E. 68); but in each of them the transfer agent was an individual, instead of a financial institution.

There is, however, a marked paucity of cases in which the agent has been held liable to the injured stockholder direct, and what cases there are rest upon some flagrant breach of faith on the part of the agent, and not upon the results of the exercise of due skill, honesty, and knowledge of his functions; nor is there any case which even defines that due skill and diligence which the agent is supposed to exercise.

Probably the nearest we can get to the point in the decisions—and that is not very near—is McClure *v.* Central Trust Co. 165 N. Y. 108, 53 L. R. A. 153, 58 N. E. 777 (the H. H. Warner patent medicine case), in which the trust company acted as depository of stock which it transferred to purchasers without notice of a lien impressed thereon of sufficient proportions to render it valueless, and the court, in holding the company liable for failure to deliver unencumbered stock, said: "Shares of stock so covered with liens as to be of no value are not what the parties meant. . . . The defendant cannot escape liability by claiming that it sold as agent, for it did not disclose the name of its principal [which takes the case out of our exact point]. . . . It held out the shares in its possession as marketable. The acts of certifying, offering for sale, and selling were, in substance, an assertion to that effect."

In this state of the law, then, forecasts as to how the courts will act on this question when it comes up for direct decision are largely speculative; but the trend of decisions which touch the borders of the matter, and the application of established legal principles, would seem to indicate that the agent's liability to the interested public will be as settled as is its liability to the corporation for which it acts; that the injured party may look successfully for reimbursement to either the agent, or the corporation, or both; and that trust companies are today taking large risks for comparatively small fees, and are engaged in a form of insurance which may swamp any of them once a squarely adverse decision is handed down. It therefore behooves these companies to take every possible precaution against the time of danger.

One of the reckless practices of transfer agents lies in the use of the word "countersigned" above their signatures on the face of the certificates issued. The true and legal significance of that word has been clearly stated by the courts.

"This word has a well-defined meaning, both in the law, and in the lexicon. To countersign an instrument is to sign what has already been signed by a superior, to authenticate by an additional signature, and usually has reference to the signature of a subordinate in addition to that of his superior by way of authentication of the execution of the writing to which it is affixed, and it denotes the complete execution of the paper. . . . When, therefore, the defendant's secretary and transfer agent countersigned and sealed this certificate, and put it in circulation, he declared in the most formal manner that it had been properly executed by the defendant, and that every essential requirement of law and of the by-laws had been performed to make it the binding act of the company." Fifth Avenue Bank *v.* Forty-second Street & G. Street Ferry R. Co. 137 N. Y. 231, 19 L. R. A. 331, 33 N. E. 378.

This is a good deal for any transfer agent to guarantee; and the results of the passing of a very few certificates bearing fraudulent signatures of corporation officials might be highly disastrous.

The most obvious remedy is to change the vital word, using one which means less, and in this regard we probably cannot do better than follow the English example, and adopt the word "entered." On its face this means merely that the transaction has been noted

on the books, and guarantees nothing as to the signatures of the corporation officials.

Again; the law requires the owner of stock who desires to transfer it to sign the power of attorney on the back of the certificate. When this certificate is presented for transfer, unless the agent is familiar with the signature he is in a quandary. He hesitates to effect the transfer because he is not sure of the genuineness of the signature, and he hardly wants to refuse, because then, in case the transaction is in fact legitimate, someone is liable to an action as for conversion of the stock. In the present uncertain state of the law, if he acts, and the signature proves to have been a forgery, he may be liable to the company in damages.

The best method yet hit upon for protecting the agent in such case is by way of special clauses in the contract of agency, of which the following are examples:

"In case any question shall arise, or any doubt shall exist, on the part of the agent, as to the propriety, regularity, legality, or otherwise of the proposed transfers, or any matter connected therewith, whether of prior indorsement, title, or otherwise, then and in such case the agent reserves the right to refer such questions to your company for instructions."

"The agent assumes no responsibility or liability for the regularity, legality, or genuineness of any indorsements on certificates of stock, or otherwise, or for the signatures purporting to be signed by or on behalf of any stockholders, officer, or agent, or other person or persons, or by any party in a representative capacity, nor for the regularity, validity, or propriety of any instrument of transfer or of title. Neither does the agent assume any responsibility for, or liability by reason of, any unauthorized issue of stock; nor shall it be assumed to guarantee, represent, or be in anywise responsible for, nor shall it be so responsible for, the validity, legality, or regularity of the stock now or hereafter issued by your company, or any assignment or transfer thereof."

We cannot, of course, be certain that even these protective measures are absolutely impregnable, but, until passed upon adversely by the courts, they are valuable as preventatives. The element of public policy would enter into the question of the agent's liability, since, as a matter of fact, his discretion is wide, and, in view of all these circumstances, trust companies acting in these capacities may well consider the possibility of an adverse decision when the question does finally come up for direct adjudication.

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Judicial Tenure.

An Ohio correspondent wishes CASE AND COMMENT to speak out in advocacy of a life tenure of judges, and points out the unsatisfactory features of a system under which judges are elected for short terms. Nothing can possibly be better settled than the unwisdom of a judicial system which gives judges only a temporary experience on the bench. The shorter the terms of office the less likelihood there seems to be of re-election. Where the term is very short there is little inducement to a competent man to take a position on the bench, even if the salary be more than his income from law practice, which is not likely to be the case. No good lawyer can afford to have his practice broken up for several years for any slight temporary increase of income. On the other hand, where the judicial tenure is an extended one the salary, if reasonably good, may by its certainty be as attractive as a prospect of considerable larger income, which is not a certainty. Moreover, the amount of salary paid in a jurisdiction seems to be, usually, somewhat in proportion to the length of the judicial term. The longer the term the higher the salary is likely to be. Good salaries and long terms tend to give dignity, honor, and influence to a tribunal. Some men of very great ability, who would be an ornament to any bench, are found from time to time even in those courts where low salaries and short terms exist, but exigencies of politics may soon retire them from office, and a short period of service gives them scant opportunity to make the reputation of which they are capable. It is unfortunate that in so many jurisdictions false economy and false theories of rotation in office are allowed to interfere with the development of the best possible tribunals.

Election, or appointment for life, however, is not necessary to secure what is practically a life tenure. Experience in the state of New York has demonstrated that the judges of the highest court, though elected for fourteen years, are very nearly secure in their positions for life, or up to

the age limit fixed by the Constitution. The election just held illustrates this. Judge O'Brien, whose term had expired, was renominated by both the great political parties, and received an election substantially unanimous. The record in that state for many years past is substantially to the same effect. An able judge of the court of appeals or supreme court is usually sure of reelection when his term expires. The long term, supplemented by the good sense of the people in respect to re-elections, makes a system quite as good as that of an election for life.

Prosecution of Boodlers and Grafters.

"A dull public conscience, an easy-going acquiescence in corruption, infallibly means debasement in public life, and such debasement in the end means the ruin of free institutions. Self-government becomes a farce if the representatives of the people corrupt others, or are themselves corrupted." These words of President Roosevelt, in his memorandum approving the prosecution of the numerous persons indicted for crimes affecting the postal service, are words which ought to penetrate the public heart. It is doubtful if there is anything else on which the American people need to be more thoroughly roused than this matter of prosecuting boodlers and grafters. What seems to be, now and then, an epidemic of corruption in the public service is, there is too much reason to fear, only the exposure of a chronic condition. Yet it is to be hoped that the condition is not usually so virulent as when these exposures are made. It is a matter of common knowledge that, in some of our great cities, rankest official corruption has become a matter of course, perfectly well known to the public. Men who are most familiar with the life of some of our state capitals do not hesitate to say that no man who is not rock-ribbed in his honesty can be expected to resist the corrupting atmosphere of these places.

Methods of corruption are sometimes so seductive and insidious as to give small chance of detection or punishment. Officials who would gladly punish such crimes often think it is useless to attempt a prosecution. The result is that even what might be detected and punished usually is not. The attempts to convict of such crimes must, nevertheless, be persistent.

The spirit of the prosecution of any crime must be, not vindictiveness, but duty to the public. In prosecuting men of high station and social prominence, when their innocent families are necessarily involved in their suffering, the influences to protect them are great. But sympathy with the suffering must not overcome a relentless exercise of duty to the public. Nothing scandalizes justice more than the shielding of prominent criminals, while the more ignorant and less guilty are punished.

Political influences are often so powerful as to defeat the punishment of the guilty. Fear of injury to their political party leads officials to smother the knowledge of criminal acts. When indictments are found, political influences sometimes get them pigeonholed. Newspapers that with great eagerness print scandals about officials of another party often cover up or deny the facts which incriminate men of their own party. In all these, and in other, ways, political cowardice and dishonesty too often defeat justice.

Numbers of men who want to be thought, and who want to think themselves honest, and who do not want to have any personal knowledge of vote buying, chuckle with mingled deprecation and satisfaction over the report that their party managers have money enough to carry the election.

An undercurrent of corruption in political matters, known and tolerated by many who deem themselves good citizens, is responsible for a large part of the corruption which exists in official life. Hypocrisy of the rankest sort is the usual thing with many of the most respected citizens and the most prominent party journals. Loud cries of political corruption go up when the other party buys votes, but eyes are closed or softly winked at such business on behalf of their own party. Men who have got office by such methods are not entirely illogical if they use them while in office to reimburse themselves, at least for what they have spent. Until there is enough stern virtue on the part of the average citizen to discountenance, denounce, and, if possible, give aid to punish corruption by his own party, it will not be strange if he is not specially alert to demand the prosecution of officials who employ similar methods.

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Aliens.

Nonresident aliens are held, in Bonthron *v.* Phœnix Light & F. Co. (Ariz.) 61 L. R. A. 563, to be entitled to maintain an action, under statutes authorizing actions to recover damages for injuries causing death, for the benefit of certain of the relatives of decedent, to be brought by all the parties entitled thereto, or by any one or more of them for the benefit of all.

Animals.

See CONSTITUTIONAL LAW.

Beneficiary Societies.

See INSURANCE.

Building and Loan Associations.

See CONSTITUTIONAL LAW.

Carriers.

See also MANDAMUS.

Riding in the coach set apart for colored passengers, contrary to the rules of the carrier and provisions of the statute, is held, in Florida C. & P. R. Co. *v.* Sullivan (C. C. A. 5th C.) 61 L. R. A. 410, not to be negligence on the part of a white person which will prevent a recovery for his death through the negligence of the carrier, although he would not have been injured had he not been in that coach.

Conflict of Laws.

A statute making void all sales of intoxicating liquors, and providing for a return of the price paid, is held, in Brown *v.* Wieland (Iowa) 61 L. R. A. 417, not to apply to sales consummated in another state, although they were made in response to an order procured by a local agent, and were delivered by the carrier to the purchaser in the state where the statute exists.

Conspiracy.

A combination to fix prices in restraint of trade is held, in State *ex rel.* Crow *v.* Armour Packing Co. (Mo.) 61 L. R. A. 464, to be properly shown by acts on the part of several competing dealers in the same line of trade, such as selling at a fixed price from which rebates are given in goods or weights, giving notice of coming advances in price, which always follow as announced, securing concessions from competitors of the right to sell shop-worn goods, gathering evidence of sales under price, and abandoning such conduct as soon as legal proceedings are instituted to punish them.

Constitutional Law.

A statute permitting the sale at auction of trespassing animals, after the posting for ten days by the proper officer of notice that the animals had been impounded, and are detained for a certain amount of damages and costs, without providing any judicial proceeding to ascertain either the damages to be paid, or whether or not the animals

were in fact running at large within the meaning of the statute, is held, in Greer *v.* Downey (Ariz.) 61 L. R. A. 408, to be void as depriving the owner of his property without due process of law.

A statute authorizing the question of the good faith of the prosecuting witness in instituting a prosecution to be tried and determined at the same time that the defendant is tried, and the taxation of costs against him in case it is found that in filing the information he acted maliciously or without probable cause, is held, in Rickley *v.* State (Neb.) 61 L. R. A. 489, to be unconstitutional and void.

A limitation of the hours of labor of employees of a public-service corporation, such as a street railway company, to not more than ten out of twenty-four, to be performed within twelve consecutive hours, is held, in *Re* Ten-Hour Law for Street Railway Corporations (R. I.) 61 L. R. A. 612, to be a valid exercise of the police power of the legislature.

A statute giving mortgages to building and loan associations priority over other liens upon the mortgaged property filed subsequent to the recording of the mortgage, is held, in Julien *v.* Model Building, L. & I. Asso. (Wis.) 61 L. R. A. 668, not to be void as depriving anyone of the equal protection of the laws.

Contracts.

A contract for the purchase and sale of phosphate rock is held, in Loudenback Fertilizer Co. *v.* Tennessee Phosphate Co. (C. C. A. 6th C.) 61 L. R. A. 402, not to be void for lack of mutuality, where one party agrees to take from the other all his consumption of such rock in his business as a fertilizer manufacturer, for a term of years at a stipulated price, which the other agrees to supply, it being stated that the annual consumption is estimated at a certain amount under normal conditions, but that the purchaser shall be entitled to demand double that quantity if required.

If a person makes a contract with another for the benefit of a third person, the latter is held, in Tweeddale *v.* Tweeddale (Wis.) 61 L. R. A. 509, to be entitled to enforce it at law regardless of his relations with the first person, or whether he had any knowledge of the transaction at the time of its occurrence, and regardless of any formal assent thereto on his part prior to the commencement of the action.

A contract between husband and wife to secure a divorce *a vinculo matrimonii* is held, in Palmer *v.* Palmer (Utah) 61 L. R. A. 641, to be contrary to public policy, and void.

Corporations.

A sale by an officer of a corporation, of stock therein, nominally made to other officers, but in reality made, as he knew, to the corporation itself, and paid for, as he knew, out of the assets of the company, is held, in Hall *v.* Henderson (Ala.) 61 L. R. A. 621, to be void as against the corporation's creditors, as a gift to him of the company's assets, whether it is insolvent or not.

Costs.

See CONSTITUTIONAL LAW.

Courts.

See INJUNCTION.

Execution.

See LEVY.

Garnishment.

The defense of a suit to recover damages from a police officer for assault while acting in the line of his duty, under an adverse judgment in which he would be liable to an arrest, is held, in Fisher *v.* Shea (Maine) 61 L. R. A. 567, to be necessary, so as to bring a claim for legal services rendered therein within an exception of claims for necessaries in a statute forbidding the garnishment of wages.

Highways.

See also MUNICIPAL CORPORATIONS; PUBLIC IMPROVEMENTS.

Delay in the construction of a bridge be-

cause of inability to procure the necessary steel work on account of strikes and labor troubles is held, in Lund v. St. Paul, M. & M. R. Co. (Wash.) 61 L. R. A. 506, not to render one who has undertaken to construct the bridge liable for injuries caused by the continued obstruction of the street, where there is nothing to show that the material could have been procured from any other source any quicker.

A boy who stops in a street on his way home to rest and cool off after finishing a game which he has been playing in a vacant lot is held, in Kessler v. Berger (Pa.) 61 L. R. A. 611, not to be a lounger, as matter of law, so as to prevent his recovering for injuries by the fall upon him of lumber illegally piled in the highway.

Husband and Wife.

See CONTRACTS.

Injunction.

The prohibition on Federal courts against staying proceedings of a state court, or of its officers, is held, in National Surety Co. v. State Bank (C. C. A. 8th C.) 61 L. R. A. 394, not to prevent a Federal court from enjoining the plaintiff, in an unconscionable judgment of a state court, from using it to extort money from a defendant who ought not, in equity and good conscience, to pay it.

Insurance.

The fact that an accident ruptured a kidney because of its cancerous condition is held, in Fetter v. Fidelity & C. Co. (Mo.) 61 L. R. A. 459, not to prevent the accident from being the cause of the ensuing death of the injured person, "independent of all other causes," within the meaning of a policy of accident insurance held by him.

The mere fact that an applicant for insurance is receiving a pension from the government for alleged physical injuries is held, in Black v. Travelers' Ins. Co. (C. C. A. 3d C.) 61 L. R. A. 500, not to show that he has a bodily infirmity within the meaning of a warranty in the policy.

Where a certificate of a fraternal beneficiary society is payable only to certain specified persons, and the member dies without leaving anyone who is entitled to be made a beneficiary under his certificate, it is held, in Warner v. Modern Woodmen of America (Neb.) 61 L. R. A. 603, that no equitable rights accrue to either the creditors or the estate of the deceased member, and that the fund contemplated by the certificate will revert to the society.

Intoxicating Liquors.

See CONFLICT OF LAWS.

Levy.

The death of a plaintiff in execution after execution has been issued and placed in the hands of the levying officer is held, in Hatcher v. Lord (Ga.) 61 L. R. A. 353, not to prevent the officer from enforcing the same, nor from making any entries thereon that may be necessary to prevent the dormancy of the judgment, even though there be no legal representative of the estate of plaintiff in execution, and no request be made by anyone interested in the judgment to have such entries made.

Mandamus.

Mandamus is held, in Loraine v. Pittsburg, J., E. & E. R. Co. (Pa.) 61 L. R. A. 502, to be a proper remedy to compel a railroad company to furnish cars to a shipper, which it refuses to do except on compliance with illegal conditions.

Master and Servant.

A brakeman on a railroad is held, in Murray v. Boston & M. R. Co. (N. H.) 61 L. R. A. 495, not to assume the risk of accident from the proximity of a jigger-stand to a switch, where he does not know of it, and is not chargeable with such knowledge in the exercise of ordinary care in the performance of his duties.

Municipal Corporations.

A prima facie case of negligence, rendering

a city liable to a traveler injured by the explosion of a boiler under the sidewalk, in the absence of evidence that it exercised reasonable care in the premises, is held, in Beall *v.* Seattle (Wash.) 61 L. R. A. 583, to be made out by showing that it consented to the maintenance of the boiler there under conditions which were a violation of a city ordinance prescribing the structural work to be used in case the space under the walk was to be utilized.

Negligence.

See CARRIERS; HIGHWAYS; MUNICIPAL CORPORATIONS.

Public Improvements.

An agreement by a contractor for a street improvement that he will look, alone, to the property assessed, and in no event be entitled to recover from the city, is held, in Louisville *v.* Bitzer (Ky.) 61 L. R. A. 431, not to prevent such recovery, where the city had no authority to make the improvement at the cost of the abutting property, where the agreement was made under a statute which contained a similar exemption, and was re-enacted by the legislature after it had been construed not to be applicable to such cases.

Where a city charter requires that contracts for public work must be let to the lowest bidder after advertising for bids, it is held, in Diamond *v.* Mankato (Minn.) 61 L. R. A. 448, that any contract entered into with the best bidder, containing substantial provisions beneficial to him which were not included in the specifications, is void.

Injury caused to abutting property by the original establishment of the grade of a street is held, in Less *v.* Butte (Mont.) 61 L. R. A. 601, to be as much within the prohibition of a constitutional provision that property shall not be taken or damaged for public use without compensation as that caused by subsequent changes of grade.

Public Money.

An appropriation to cover the expenses incurred and paid by a municipal officer in the discharge of his duty is held, in State *ex rel.* Crow *v.* St. Louis (Mo.) 61 L. R. A. 593, not to be within a constitutional prohibition of the granting of public money to an individual.

Railroads.

A railroad company which permits a car to break loose from a train on a grade, and run down into collision with another car at the foot of the decline in such a way as to be hurled off of the right of way to the injury of a bystander, is held, in West Virginia, C. & P. R. Co. *v.* State use of Fuller (Md.) 61 L. R. A. 574, to be liable for the injury thereby caused to him, unless it is shown that the accident was unavoidable.

The cutting of a train of cars on a side track, leaving some on one side and some on the other of a highway, where the view of the other tracks is partially obscured thereby, is held, in Passman *v.* West Jersey & S. R. Co. (N. J.) 61 L. R. A. 609, not to be an invitation to the public to cross without using ordinary precaution to ascertain if such crossing can be safely made.

Street Railways.

See also CONSTITUTIONAL LAW.

A street railway company is held, in Lucas *v.* St. Louis & S. R. Co. (Mo.) 61 L. R. A. 452, not to be guilty of negligence in building in a public street, for the accommodation of its passengers, a platform around the stump of a pole which had been left by an electric light company, and which the railroad company had no right to remove, so as to render it liable to one who stumbles over it and is injured in attempting to board a car.

A street railway company is held, in Sams *v.* St. Louis & M. R. R. Co. (Mo.) 61 L. R. A. 475, not to be within the provisions of a statute making corporations owning or operating railroads liable for injuries to one servant by the negligence of another while engaged in the work of operating such railroad.

Taxes.

A "seat" in an unincorporated stock ex-

change, which can only be disposed of subject to the regulations of the exchange, is held, in Baltimore *v.* Johnston (Md.) 61 L. R. A. 568, not to be taxable under a statute which makes no direct provision for its assessment, where the provision for the assessment of tangible personal property "at its cash value without looking to a forced sale" is inapplicable, and no attempt has been made to assess such seat since the organization of the exchange, a period of fifty years.

Ten-Hour Law.

See CONSTITUTIONAL LAW.

Torts.

A reservation of the right to proceed against the others is held, in McBride *v.* Scott (Mich.) 61 L. R. A. 445, not to prevent a settlement with, and release of, one of several joint tort feasors from operating as a discharge of all.

Trial.

To entitle the defendant to the opening and conclusion of the argument in the trial of a case arising *ex delicto*, when the act complained of was not one which, under the law, could be justified, it is held, in Brunswick & W. R. Co. *v.* Wiggins (Ga.) 61 L. R. A. 513, to be necessary that defendant admit, not only the commission of the act, but also such other facts as would entitle plaintiff to have a verdict, without proof, for the amount claimed in the petition.

Voters and Elections.

The punishment of merely lawless acts of individuals in preventing colored persons from voting at purely state elections is held, in Karem *v.* United States (C. C. A. 6th C.) 61 L. R. A. 437, not to be within the power of Congress.

Waters.

The provision in the act of Congress forbidding obstructions in navigable rivers which are not authorized by Congress is held, in Kansas City M. & B. R. Co. *v.* J. T. Wiygul & Son (Miss.) 61 L. R. A. 578, not to apply to an obstruction placed in the bed of a river for the purpose of repairing a bridge which had been placed across the river under state authority prior to the passage of that act.

So long as a prior appropriator's use of water is neither interfered with nor abridged he is held, in Salt Lake City *v.* Salt Lake City Water & E. P. Co. (Utah) 61 L. R. A. 648, to have no just cause of complaint, although another appropriator above him also uses the same water for a beneficial purpose.

The Erie canal, which, though lying wholly within the state of New York, forms a part of a continuous highway for interstate and foreign commerce by connecting Lake Erie with the Hudson river, is held, in Perry *v.* Haines (U. S. Advance Sheets, 8), to be a navigable water of the United States, as contradistinguished from a navigable water of the state, and within the exclusive admiralty jurisdiction of the Federal courts.

Wills.

A devise to one absolutely and forever is held, in Roth *v.* Rauschenbusch (Mo.) 61 L. R. A. 455, to convey a fee simple which cannot be cut down by a subsequent clause directing the disposition of any remainder which may be undisposed of at the death of the devisee.

Under a bequest to one or more persons living, and to the children of another who is dead, it is held, in Collins *v.* Feather (W. Va.) 61 L. R. A. 660, that the legatees will take *per capita*, unless it appears from the context or some clause in the will, or from the circumstances in view of which it was made, that the testator intended a stirpital distribution.

Recent Articles in Law Journals and Reviews.

"Rights of Beneficiaries Erroneously or Falsely Described in Benefit Society Certificates."—57 Central Law Journal, 383.

"Are Dogs Property?"—57 Central Law Journal, 389.

"Some Points on the Law of Murder."—67 Justice of the Peace, 520, 530.

"Defects in the Laws Relating to Married Women."—116 Law Times, 2.

"The Supremacy of the Judiciary under the Constitutions of the United States and of Australia."—17 Harvard Law Review, 1.

"The Origin of the Right to Engage in Interstate Commerce."—17 Harvard Law Review, 20.

"The Northern Securities Case under a New Aspect."—17 Harvard Law Review, 41.

"Due Process of Law."—11 American Lawyer, 431.

"The Doctrine of Reasonable Doubt."—11 American Lawyer, 440.

"The Firm as a Legal Person."—57 Central Law Journal, 343.

"Instinct of Self-Preservation as Establishing a Presumption of Freedom from Contributory Negligence."—57 Central Law Journal, 353.

"Action for Infringement of Right of Privacy Based upon Breach of Trust or Confidence."—57 Central Law Journal, 361.

"The Liability of a Bank on a Certified Check."—57 Central Law Journal, 367.

"Whether a Bank is Chargeable with Notice of Defense to a Note Transferred to It by an Officer or Director of Said Bank Who Has Knowledge of Its Infirmities."—57 Central Law Journal, 371.

"Immunity of Married Women from Criminal Liability."—36 Chicago Legal News, 94.

"The Alaska Boundary Award."—39 Canada Law Journal, 684.

"Mens Rea."—39 Canada Law Journal, 691.

"The Fellow-Servant Doctrine in the United States Supreme Court."—2 Michigan Lake Review, 79.

"Covenants as Quasi Contracts."—2 Michigan Law Review, 106.

"Foreign Voluntary Assignments for the Benefit of Creditors—Part I."—2 Michigan Law Review, 112.

"Verbal Alterations of Written Contracts in Material Parts."—57 Central Law Journal, 403.

"Prize Fighting and the Power of Equity to Enjoin It in Certain Cases."—57 Central Law Journal, 407.

"The Law's Delay No Excuse for Lynching."—65 Albany Law Journal, 337.

"Law and Reasonableness."—7 Law Notes, 148.

"The Fellow-Servant Doctrine in the U. S. Supreme Court (Continued)."—36 Chicago Legal News, 110.

"Husbands and Wives as Witnesses."—67 Justice of the Peace, 543.

New Books.

"Indiana Practice and Pleading." By Hon. John D. Works. (The Robert Clarke Co., Cincinnati, Ohio.) 2 Vols. $12.

"The Encyclopædia of Evidence." Vols. 1 and 2 ready. By Edgar W. Camp and John F. Crowe. (L. D. Powell Co., Los Angeles, Cal., 1903) Price (until Jan. 1, 1904,) $6 per Vol.

"Stock and Stockholders." By Arthur B. Helliwell. (For sale by L. C. P. Co.) 1 Vol. $6.

"The Law Relating to Oil and Gas." By W. W. Thornton. (The W. H. Anderson Co., Cincinnati, Ohio.) 1 Vol. $6.

"Lawyers' Diary and Directory for 1904." (Matthew Bender, Albany, N. Y.) 1 Vol. $2.

"Encyclopedia of Common-Law Orders, Verdicts and Remarks on Law Record." By John H. Best. (George I. Jones, Chicago, Ill.) 1 Vol. $5 net or $5.25 delivered.

"Parsons on Contracts." Revised by John M. Gould. (L. C. P. Co.) 3 Vols. $18 net.

"Wills." Hornbook Series. By Geo. E. Gardner. (West Publishing Co., St. Paul, Minn.) 1 Vol. $5.75 net.

"Morrison's Mining Reports." Vols. 17, 18. (For sale by L. C. P. Co.) $5 per Vol. delivered.

"Utah Reports." Vol. 25. (For sale by L. C. P. Co.) $6 delivered.

"The New York Employers' Liability Acts" By George W. Alger and Samuel S. Slater. (Matthew Bender, Albany, N. Y.) 1 Vol. $2.

"Brightly's Digest of Laws." A Digest of the Laws of Pennsylvania from 1893 to 1903 inclusive. (Rees Welsh & Co., Philadelphia, Pa.) 1 Vol. $7.50.

"McDonald's Treatise on the Laws of Indiana." Newly revised and greatly enlarged by Benjamin F. Watson. (The Robert Clarke Co., Cincinnati, Ohio.) 1 Vol. $7.50.

"Georgia Reports." 1805 to 1880. Annotated. 24 Vols. First book now ready. (The Michie Co., Charlottesville, Va.) $7.50 per Vol. $180 per set.

"Lien Law of the State of New York." 4th Ed. Revised and enlarged. By William L. Snyder. (L. C. P. Co., New York.) 1 Vol. $3.50 net.

"Calendar of the Middle Temple Records." By C. H. Hopwood K. C. (Butterworth & Co., London, Eng.) 10s. 6d.

"Supplement to Throop's Massachusetts Digest." Vols. 167 to 180. By Robert C. Cumming. (Banks Law Publishing Co., New York. 1903.) Vol. 3, $6.

"Rumsey's Practice." Vol. 2 of New Edition. Vols. 1 and 2 ready. Vol. 3 in press. (L. C. P. Co., Rochester, N. Y.) 3 Vols. $18.

"Treatise on the Law of Negligence." By Edward B. Thomas. 2d edition. (L. C. P. Co., Rochester, N. Y.) 2 Vols. $12.

"Alabama Reports." Vol. 136. (L. C. P. Co., Rochester, N. Y.) $4.

"Cooley's Constitutional Limitations." 7th Ed. A treatise on the constitutional limitations upon legislative power in the several states of the American Union. (Little, Brown & Co., Boston, Mass.) 1 Vol. $6.

The Humorous Side.

THE MAXIM AND THE MUSE.

Consistency is rightly said
To be a precious jewel,
Except in beefsteaks and such things
That one would like to chew well.
The pleader and the carpenter
Should look to their dove-tailing,
Or, like my mixed-up metaphors,
They'll find it but rough sailing.

From him who goes to fish for trout
Among the far Canuckers,
And then comes home to look for what
Are vulgarly called suckers;
From him who to a higher plane
Of politics would talk us,
And then as he would pack his grip
Goes out to pack the caucus;

From him who lives as though his veins
Ran but the blue corpuscle,—
Degenerate son of blacksmith sire
Who had a biceps muscle,—
From all of these and many like,
May Heaven above defend us,
For,—*allegans contraria*
Non est audiendus.

H. W. C.

AS WISE AS SOLOMON.—A news item from Mississippi tells of a case in justice's court between two negroes, in which prominent lawyers were employed, to determine the ownership of fifteen ducks. As the witnesses on both sides of the case were equally positive in testifying for their respective principals on the question of ownership, the matter was at a stand off when the justice, after the manner of Solomon and Sancho Panza, solved the problem by deciding that the ducks should be turned into the open in the morning, and that the party to whose house they returned in the evening should be declared the owner.—

FORTIFIED AGAINST THE SUPREME COURT.—A correspondent writes us about a Pennsylvania justice of the peace to whom an attorney was reading from the Supreme Court Reports when he was peremptorily stopped by the justice, who said: "You may just as well shut up your book, for with my right hand on Purdon's Digest and my left hand on Binney's Justice, I would not yield to Daniel Webster or Henry Clay on a point of law."

AN ARKANSAS INQUEST.—A correspondent writes from Arkansas the following report of an inquest held there on the 5th day of October, 1902, by a justice of the peace over the body of a fisherman who had been found dead with his throat cut:

He empaneled a jury of 30 men. In the examination the jury found $14 on the deceased's person of which the justice took charge. He declared himself administrator of Geo. Brown's estate, and while the jury inquired into the cause of death he proceeded to wind up the deceased's estate by selling his boat, nets, tackles, etc., to the highest bidder for cash. What he failed to sell for cash he traded to the coroner's jury to pay their fees, giving one a few dishes, another a pot, another fishing tackles, etc. The jury found that the deceased died from "cutting his throat."

But the Justice, fearing that he might have also been affected with some contagious disease, ordered the constable to proceed at once to burn the tent and bedding.

Having satisfied the jury, he gave the constable the dead man's cook-stove for his fee, kept the $14 cash as his fee, declared the estate wound up, and sent in a claim of $15 to the county court for burial expenses.